

01-24-02

UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications
under 37 CFR 1.53(b))

Attorney Docket No.	7571RD
First Inventor	Thomas James Klofta
Assignee	The Procter & Gamble Company
Title	Absorbent Article Having A Stable Skin Care Composition
Express Mail Label No.	EF187735941US

APPLICATION ELEMENTS
See MPEP Chapter 600 concerning utility patent application contents.ADDRESS TO: **Box Patent Application
Assistant Commissioner for Patents
Washington, D.C. 20231**

- ☒ Fee Transmittal Form (e.g., PTO/SB/17)
(Submit an original, and a duplicate for fee processing)
- ☒ Specification Total Pages [55]
(preferred arrangement set forth below)
 - Descriptive Title of the Invention
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R&D
 - Reference to sequence listing, a table, or a computer program listing appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claim(s)
 - Abstract of the Disclosure
- ☒ Drawing(s) (35 USC §113) Total Sheets [3]
- ☒ Oath or Declaration Total pages [2]
 - ☐ Newly executed (original or copy)
 - ☐ Copy from a prior application (37 CFR §1.63(d))
(for continuation/divisional with Box 17 complete)
 - ☐ **DELETION OF INVENTORS**
Signed statement attached deleting inventor(s)
named in the prior application,
see 37 CFR §§1.63(d)(2) and 1.33(b).
- ☐ Application Data Sheet. See 37 CFR §1.76

- ☐ CD-ROM or CD-R in duplicate, large table
or
Computer Program (Appendix)
- Nucleotide and/or Amino Acid Sequence Submission
(if applicable, all necessary)
 - ☐ Computer Readable Form (CRF)
 - Specification Sequence Listing on:
 - ☐ CD-ROM or CD-R (2 copies); or
 - ☐ Paper
 - ☐ Statement verifying identity of above copies

ACCOMPANYING APPLICATION PAPER

- ☐ Assignment Papers (cover sheet & document(s))
- ☐ 37 CFR 3.73(b) Statement ☐ Power of Attorney
(when there is an assignee)
- ☐ English Translation Document (if applicable)
- ☐ Information Disclosure ☐ Copies
of IDS
- Statement (IDS)/PTO-1449 Citations
- ☐ Preliminary Amendment
- ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
- ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)
- ☐ Nonpublication Request under 35 U.S.C.
122(b)(2)(B)(i). Applicant must attach form
PTO/SB/35 or its equivalent.
- ☒ Other:
 - Remarks Accompanying Filing Papers
 - Request for Interference with Patent
Under 37 C.F.R. §1.607
 - Petition to Delete Inventors

17. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR §1.76:
☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP) of prior application No. 09/563,638
 Prior application information: Examiner: D. Ruhl Group/Art Unit: 3761

For CONTINUATION OR DIVISIONAL APPLICANTS only. The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS☒ Customer Number

(Insert Customer No. here)

27752

Name (Print/Type)	Caroline Wei-Berk	Registration No. (Attorney/Agent)	45,203
Signature	<i>Caroline Wei-Berk</i>	Date	January 22, 2002

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FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

Complete if Known

Application Number

Confirmation Number

Filing Date

January 22, 2002

First Named Inventor

Thomas James Klofta

Examiner Name

Group/Art Unit

3761

Attorney Docket No.

7571RD

TOTAL AMOUNT OF PAYMENT (\$740.00)

METHOD OF PAYMENT (check one)

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:

Deposit Account Number 16-2480

Deposit Account Name The Procter & Gamble Company

- ☒ Charge Any Additional Fee Required Under status. 37 C.F.R. §§1.16 and 1.17

FEE CALCULATION

1. BASIC FILING FEE - Large Entity

Code	(\$)	Fee Description	Fee Paid
101	740	Utility filing fee	740.00
106	330	Design filing fee	
108	740	Reissue filing fee	
114	160	Provisional filing fee	

SUBTOTAL (1) (\$740.00)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE - Large Entity

Total Claims	4 - 20** =	Extra Claims	Fee from Below	Fee Paid
		0	x	[] = []

Independent Claims 1 - 3** = 0 x [] = []

Multiple Dependent [] = []

** = number previously paid, if greater; For Reissues, see below

Code	(\$)	Fee Description
103	18	Claims in excess of 20
102	84	Independent claims in excess of 3
104	280	Multiple dependent claim, if not paid
109	84	**Reissue independent claims over original patent
110	18	**Reissue claims in excess of 20 & over original patent

SUBTOTAL (2) (\$[])

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Code	(\$)	Fee Description	Fee Paid
105	130	Surcharge-late filing fee or oath	
127	50	Surcharge-late provisional filing fee or cover sheet	
139	130	Non-English specification	
147	2,520	For filing a request for <i>ex parte</i> reexamination	
112	920*	Requesting publication of SIR prior to Examiner's action	
113	1,840*	Requesting publication of SIR after Examiner's action	
115	110	Extension for reply within 1 st month	
116	400	Extension for reply within 2 nd month	
117	920	Extension for reply within 3 rd month	
118	1,440	Extension for reply within 4 th month	
128	1,960	Extension for reply within 5 th month	
119	320	Notice of Appeal	
120	320	Filing a brief in support of an appeal	
121	280	Request for oral hearing	
138	1,510	Petition to institute a public use proceeding	
140	110	Petition to revive - unavoidable	
141	1,280	Petition to revive - unintentional	
142	1,280	Utility issue fee (or reissue)	
143	460	Design issue fee	
122	130	Petitions to the Commissioner	
123	50	Petitions related to provisional applications (37 C.F.R. 1.17(q))	
126	180	Submission of Information Disclosure Statement	
146	740	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	Request for Continued Examination (RCE)	
169	900	Request for expedited examination of a design application	
091	1280	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	
		Other fee (specify) _____	
		Other fee (specify) _____	

* Reduced by Basic Filing Fee Paid

SUBTOTAL(3) (\$[])

SUBMITTED BY

Name (Print/Type)

Caroline Wei-Berk

Registration No.

45,203

(Attorney/Agent)

Signature

Caroline Wei-Berk

Complete (if applicable)

Telephone

(513) 626-1139

Date

1/22/02

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Date of Deposit January 22, 2002

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Caroline Wei-Berk

45,203

Attorney mailing application

Reg. No.

Caroline Wei-Berk

Signature of Attorney mailing application

Case 7571RD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Divisional Application of

Klofta et al.

Serial No.

Filed: January 22, 2002

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Group Art Unit: 3761

Examiner:

Title: **ABSORBENT ARTICLE HAVING A STABLE SKIN CARE COMPOSITION**

REMARKS ACCOMPANYING FILING PAPERS

The Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The present application is a divisional of co-pending U.S. patent application Serial No. 09/563,638, filed in the name of Gatto et al. on May 2, 2000, which is a continuation-in-part application of U.S. patent application Serial No. 09/316,691, filed in the name of Gatto et al. on May 21, 1999 (hereinafter "the '691 Application"). The present application is entitled to the benefit of the May 21, 1999 filing date under 35 U.S.C. §120.

REMARKS

The present application is filed to provoke an interference between the present application and U.S. Patent 6,217,890, entitled "Absorbent Article which Maintains or Improves Skin Health", issued to Paul et al. on April 17, 2001, and assigned to Kimberly-Clark Corporation. Claims 1-4 of the present application correspond exactly or substantially to claims 1-17 of the '890 Patent.

The present application is entitled to the benefit of the May 21, 1999 filing date under 35 U.S.C. §120 of the '691 Application. The support for claims 1-4 of the present application can be found in Applicants' original disclosure in the '691 Application and in the present application is as follows:

PRESENT CLAIMS	SUPPORT IN APPLICANTS' ORIGINAL DISCLOSURE IN THE '691 APPLICATION (AND IN THE PRESENT APPLICATION)
<p>1. A disposable absorbent article which defines a front waist region, a rear waist region, and a crotch region which interconnects said front and rear waist regions, said absorbent article comprising:</p>	<p>Page 39, lines 21-24 of the '691 Application (and Page 39, line 35-Page 40, line 2 of the present application):</p> <p>"The diaper 50 is preferably applied to a wearer by positioning one of the waist regions of the diaper, preferably <u>the second waist region 58, under the wearer's back</u> and drawing the remainder of the diaper between the wearer's legs so that the other waist region, preferably <u>the first waist region 56, is positioned across the front of the wearer</u>." (emphasis added); and</p> <p>Page 35, lines 33-34 of the '691 Application (and Page 36, lines 17-18 of the present application):</p> <p>"While the skilled artisan will recognize that a diaper is usually described in terms of having a pair of waist regions and <u>a crotch region between the waist regions, . . .</u>" (emphasis added)</p>
<p>a) a vapor permeable backsheet;</p>	<p>Page 34, lines 24-25 of the '691 Application (and Page 35, lines 10-11 of the present application):</p> <p>"Furthermore, the backsheet may permit vapors to escape from the absorbent article (i.e., the backsheet is breathable) . . ."</p>
<p>b) a liquid pervious topsheet which is positioned in facing relation with said backsheet;</p>	<p>Page 32, lines 26-28 of the '691 Application (and Page 33, lines 14-16 of the present application):</p> <p>"Disposable absorbent articles typically comprise a <u>liquid pervious topsheet</u>, a liquid impervious backsheet and an absorbent core positioned between the topsheet and the backsheet." (emphasis added);</p> <p>Page 34, lines 29-30 of the '691 Application (and Page 35, lines 14-15 of the present application):</p> <p>"The backsheet and the topsheet are positioned adjacent the garment facing surface and the body facing surface, respectively, of the absorbent core."; and</p> <p>Figure 1 (showing topsheet 520 and backsheet 530 in facing relation)</p>
<p>c) an absorbent core located between said backsheet and said topsheet; and</p>	<p>Page 32, lines 26-28 of the '691 Application (and Page 33, lines 14-16 of the present application):</p> <p>"Disposable absorbent articles typically comprise a liquid pervious topsheet, a liquid impervious backsheet and <u>an absorbent core positioned</u></p>

	between the topsheet and the backsheet.” (emphasis added)
d) a skin care composition on at least a portion of a wearer-contacting surface of said absorbent article which includes from about 10 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and from about 0.1 to about 25 weight percent of a rheological agent	<p>Page 32, lines 30-32 of the ‘691 Application (and Page 33, lines 18-19 of the present application): “As used herein, ‘<u>body facing surface</u>’ means that surface of the article or component which is intended <u>to be worn toward or adjacent to the body of the wearer</u>,” (emphasis added);</p> <p>Page 41, lines 7-8 of the ‘691 Application (and Page 41, lines 23-24 of the present application): “ . . . skin care composition is either applied directly to one or more wearer-contacting surface, or”;</p> <p>Page 23, line 34-Page 24, line 2 of the ‘691 Application (and Page 24, lines 22-23 of the present application): “Preferably, the composition will comprise from about 10 to about 95%, . . . by weight, of the emollient.”</p> <p>Page 29, lines 11-14 of the ‘691 Application (and Page 29, lines 30-32 of the present application): “When present, the composition will typically comprise from about 5 to about 95 wt%, . . . of the immobilizing agent.”</p> <p>Page 28, lines 28-29 of the ‘691 Application (and Page 29, lines 19-20 of the present application): “Other types of ingredients that can be used as immobilizing agents, . . . include waxes”</p> <p>Page 17, lines 16-17 of the ‘691 Application (and Page 17, lines 31-32 of the present application): “The rheological agents comprises from about 0.1% to about 25% by weight of the total composition,”</p>
selected from the group consisting of poly- α -olefins, polyethylene, castor oil derivatives, alkyl galactomannan, polyethylene and vinyl acetate copolymers, fumed silicas, zinc stearate, cetyl hydroxy ethyl cellulose and other modified celluloses, and mixtures thereof.	<p>Page 19, line 33-Page 20, line 3 of the ‘691 Application (and Page 20, lines 17-22 of the present application): “Also useful herein are polymeric rheological agents. Nonlimiting examples are polymethacrylate polymers, polymethacrylate and styrene copolymers, which can optionally be crosslinked a common crosslinking agent, <u>polyethylene, polyethylene and acrylic acid or vinyl acetate copolymers</u>, polyisobutylene, <u>poly-α-olefins</u>, bi or tri-component copolymers of</p>

	<p>styrene and hydrogenated ethylene, propylene, butylene, and/or, Nylon 66 and hydrophobic cellulose derivatives." (emphasis added)</p> <p>Page 17, line 25 of the '691 Application (and Page 18, line 8 of the present application): "A preferred rheological agent for use herein is fumed silica, . . ."</p> <p>Page 19, lines 27-30 of the '691 Application (and Page 20, lines 12-14 of the present application): "Useful herein are various organic derivatives of castor oil, . . . Various inorganic derivatives of castor oil are also useful herein, . . ."</p> <p>Page 20, lines 16-19 of the '691 Application (and Page 21, lines 3-6 of the present application): "Other nonlimiting examples also useful herein, . . . are diethanolamides; methylethylamides; and amphoteric surfactants such as dialkylamino propionic acid; alkyl <u>galactomannan</u>, <u>zinc stearate</u>, <u>sorbitan sesquioleate</u>, <u>cetyl hydroxy ethyl cellulose</u> and other <u>modified celluloses</u>." (emphasis added)</p>
<p>2. The absorbent article of claim 1 wherein said emollient is selected from the group consisting of petrolatum, mineral oil, sucrose ester fatty acids, polyethylene glycol and derivatives, fatty acid esters, alkyl ethoxylates, fatty acid ester ethoxylates, polysiloxanes, propylene glycol and derivatives, glycerin and derivatives, triethylene glycol and derivatives, fatty acids, fatty alcohol ethers, propoxylated fatty alcohols, fatty esters of polyhydroxy alcohols, lanolin and derivatives, kaolin and derivatives, and mixtures thereof.</p>	<p>Page 21, lines 10-11 of the '691 Application (and Page 21, lines 31-32 of the present application): "Petrolatum and mineral oil are particularly preferred emollients for compositions of the present invention."</p> <p>Page 20, line 29-Page 21, line 3 of the '691 Application (and Page 21, lines 16-25 of the present application): "Representative emollients useful in the present invention include, but are not limited to, emollients that are petroleum-based; sucrose ester fatty acids; polyethylene glycol and derivatives thereof; humectants; fatty acid ester type; alkyl ethoxylate type; fatty acid ester ethoxylates; fatty alcohol type; polysiloxane type; propylene glycol and derivatives thereof; glycerine and derivatives thereof, including glyceride, acetoglycerides, and ethoxylated glycerides of C₁₂-C₂₈ fatty acids; triethylene glycol and derivatives thereof; spermaceti or other waxes; fatty acids; fatty alcohol ethers, particularly those having from 12 to 28 carbon atoms in their fatty chain, such as stearic acid; propoxylated fatty alcohols; other fatty esters of polyhydroxy alcohols; lanolin and its derivatives; kaolin and its derivatives; any of</p>

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	the monographed skin care agents listed above; or mixtures of these emollients.”
3. The absorbent article of claim 1 wherein said emollient is a petroleum-based emollient.	Page 20, lines 29-30 of the ‘691 Application (and Page 21, lines 16-17 of the present application): “Representative emollients useful in the present invention include, but are not limited to, emollients that are petroleum-based; . . .”
4. The absorbent article of claim 1 wherein said immobilizing agent is a wax selected from the group consisting of carnauba, ozokerite, beeswax, candelilla, paraffin, ceresin, esparto, ouricuri, rezowax, isoparaffin, other mined and mineral waxes, and mixtures thereof.	Page 28, lines 28-31 of the ‘691 Application (and Page 29, lines 19-22 of the present application): “Other types of ingredients that can be used as immobilizing agents, . . . include waxes such as carnauba, ozokerite, beeswax, candelilla, paraffin, ceresin, esparto, ouricuri, rezowax, isoparaffin, and other known mined and mineral waxes.”

Applicants respectfully request examination of the present application and a declaration of interference between the present application and the ‘890 Patent.

Respectfully submitted,
For: Klofta et al.

Caroline Wei-Berk

Caroline Wei-Berk
Attorney for Applicants
Reg. No. 45,203
(513) 626-1139

January 22, 2002
Customer No. 27752

"Express Mail" mailing label number EF187735941US
Date of Deposit January 22, 2002
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Caroline Wee-Berk 45,203
Attorney mailing application Reg. No.
Caroline Wee-Berk
Signature of Attorney mailing application

Case 7571RD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Klofta et al.

Serial No.

Filed: January 22, 2002

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Group Art Unit: 3761

Examiner:

Title: ABSORBENT ARTICLE HAVING A STABLE SKIN CARE COMPOSITION

REQUEST FOR INTERFERENCE

WITH PATENT UNDER 37 C.F.R. §1.607

The Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This Request for Interference is filed under 37 C.F.R. §1.607 to provoke an interference between the present application and U.S. Patent 6,217,890 entitled "Absorbent Article Which Maintains or Improves Skin Health" (hereinafter "the '890 Patent"). The '890 Patent is issued to Paul et al. on April 17, 2001, and is assigned to Kimberly-Clark Corporation.

REQUEST FOR INTERFERENCE

Pursuant to 37 C.F.R. §1.607(a)(1), Applicants request that an interference be declared between the present application and the '890 Patent.

PROPOSED COUNT

Pursuant to 37 C.F.R. §1.607(a)(2), Applicants propose the following as the Count for the interference between the present application and the '890 Patent:

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202210-2254500

The Proposed Count:

A disposable absorbent article which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections, said absorbent article comprising:

- a) a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours, calculated according to a Water Vapor Transmission Test as set forth herein;
- b) a liquid permeable topsheet which is positioned in facing relation with said backsheet;
- c) an absorbent body located between said backsheet and said topsheet; and
- d) a lotion formulation on at least a portion of a body-facing surface of said absorbent article which includes from about 5 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and from about 0.1 to about 25 weight percent of a viscosity enhancer selected from the group consisting of polyolefin resins, polyolefin polymers, polyethylene, lipophilic/oil thickeners, ethylene/vinyl acetate copolymers, silica, talc, colloidal silicone dioxide, zinc stearate, cetyl hydroxy ethyl cellulose and other modified celluloses, and mixtures thereof;

OR

A disposable absorbent article which defines a front waist region, a rear waist region, and a crotch region which interconnects said front and rear waist regions, said absorbent article comprising:

- a) a vapor permeable backsheet;
- b) a liquid pervious topsheet which is positioned in facing relation with said backsheet;
- c) an absorbent core located between said backsheet and said topsheet; and
- d) a skin care composition on at least a portion of a wearer-contacting surface of said absorbent article which comprises from about 10 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and from about 0.1 to about 25 weight percent of a rheological agent selected from the group consisting of poly- α -olefins, polyethylene, castor oil derivatives, alkyl galactomannan, polyethylene and vinyl acetate copolymers, fumed silicas, zinc stearate, cetyl hydroxy ethyl cellulose and other modified celluloses, and mixtures thereof.

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PRESENTATION OF CLAIMS OF THE '890 PATENT AND
CORRESPONDENCE WITH THE PROPOSED COUNT

Pursuant to 37 C.F.R. §1.607(a)(3), Applicants hereby show correspondence of Claims 1-17 of the '890 Patent to the Proposed Count as follows:

A. Claim 1

Claim 1 corresponds exactly to the first alternative of the Proposed Count.

B. Claims 2-17

Claims 2-17 also correspond substantially to the Proposed Count.

Claims 2-17 depend, directly or indirectly, upon Claim 1 and merely further limit the invention defined in Claim 1. Applicants submit that Claims 2-17 define the same patentable invention under 37 C.F.R. §1.601(n) as the Proposed Count. Claims 2-17 depend upon and are narrower than Claim 1 of the '890 Patent, which corresponds exactly to the first alternative of the Proposed Count.

Accordingly, Claims 1-17 of the '890 Patent correspond to the same patentable invention as defined in the Proposed Count.

PRESENTATION OF CLAIMS OF THE PRESENT APPLICATION AND
CORRESPONDENCE WITH THE PROPOSED COUNT

Pursuant to 37 C.F.R. §1.607(a)(4), Applicants hereby show correspondence of Claims 1-4 of the present application to the Proposed Count as follows:

A. Claim 1

Claim 1 of the present application corresponds exactly to the second alternative of the Proposed Count.

B. Claims 2-4

Claims 2-4 of the present application correspond substantially to the Proposed Count.

Claims 2-4 depend, directly or indirectly, upon Claim 1 and merely further limit the invention defined in Claim 1 of the present application. Applicants submit that Claims 2-4 define the same patentable invention under 37 C.F.R. §1.601(n) as the Proposed Count. Claims 2-4 depend upon and are narrower than Claim 1 of the present application, which corresponds exactly to the second alternative of the Proposed Count.

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Accordingly, Claims 1-4 of the present application correspond to the same patentable invention as defined in the Proposed Count.

CORRESPONDENCE OF THE FIRST AND THE SECOND ALTERNATIVES
OF THE PROPOSED COUNT

The first and the second alternative of the Proposed Count define the same patentable invention under 37 C.F.R. §1.601(n) in substantially corresponding language. Correspondence between the first and the second alternative of the Proposed Count is as follows:

The preamble “[a] disposable absorbent article which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections” of the first alternative of the Proposed Count corresponds exactly to the preamble of the second alternative of the Proposed Count.

The phrase “a vapor permeable backsheets which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours, calculated according to a Water Vapor Transmission Test as set forth herein” (hereinafter “WVTR” and “WVT Test”) of the first alternative of the Proposed Count corresponds substantially with the phrase “a vapor permeable backsheets” of the second alternative of the Proposed Count. This is so because the limitation “a WVTR of at least about 1000 grams per square meter per 24 hours, calculated according to a WVT Test as set forth herein” does not patentably distinguish the vapor permeable backsheets of the first alternative of the Proposed Count from the vapor permeable backsheets of the second alternative of the Proposed Count. Moreover, this limitation has no patentable significance with respect to the patentability of claim 1 of the ‘890 Patent, which corresponds exactly to the first alternative of the Proposed Count.

First, the limitation of “a WVTR of at least about 1000 grams per square meter per 24 hours, calculated according to a WVT Test as set forth herein” provides no patentable distinction to the vapor permeable backsheets because it was known in the art prior to the filing date of the ‘890 Patent.

In the file history of the ‘890 Patent, the Examiner rejected the originally filed claim 1 containing the WVTR limitation over U.S. Patent 5,810,797 to Menard et al. (hereinafter “Menard ‘797 Patent”). The Examiner stated that “Menard teaches a disposable diaper article comprising topsheet layer, absorbent body, and backsheets layer. The backsheets has [Sic] a water vapor transmission rate value of at least about 1000 g/m²/24hr.” (citation omitted) The WVT Test disclosed in the Menard ‘797 Patent is identical to the WVT Test disclosed in the ‘890 Patent. Thus, the Menard ‘797 Patent discloses each and every element relating to the WVTR limitation at issue here.

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The Menard '797 Patent is a divisional of U.S. Patent 5,558,658, issued to Menard et al. (hereinafter "Menard '658 Patent"). The Menard '658 Patent contains the same disclosure of the WVTR value and the WVT Test method as the Menard '797 Patent. The Menard '658 Patent was issued on September 24, 1996. Since the Menard '658 Patent was issued more than one year before the August 23, 1999 filing date of the '890 Patent, it is, at the very least, a 102(b) art against the '890 Patent with respect to the WVTR limitation of the backsheet. Therefore, the limitation of "a WVTR value calculated according to the WVT Test" does not provide a patentable distinction to the vapor permeable backsheet of the '890 Patent because it was known in the art before the filing date of the '890 Patent.

Further, this limitation has no patentable significance with respect to the patentability of claim 1 of the '890 Patent. In an interview with the Examiner following the above-mentioned rejection, the patentee overcame the rejection by adding the Markush group of viscosity enhancers to claim 1. The Examiner stated in the Interview Summary that "[t]he examiner suggests applicants' attorney to incorporate the Markush group in claim 27 into claim 19 to place the application in the condition for allowance. . . . Agreement was reached. . . ." The amended claim 19, containing the Markush group of viscosity enhancers of claim 27, was later issued as claim 1 of the '890 Patent. Therefore, the WVTR value of a vapor permeable backsheet is not a limitation on which the patentability of claim 1 of the '890 patent is based.

Based on the foregoing, the limitation "a WVTR of at least about 1000 grams per square meter per 24 hours, calculated according to a WVT Test as set forth herein" is not a patentable distinction for a vapor permeable backsheet and this limitation has no patentable significance with respect to the patentability of the invention defined by the first alternative of the Proposed Count.

Since the particular WVTR value of the backsheet is not a patentable limitation, and since the backsheet of the second alternative has the same vapor permeable function as the backsheet of the first alternative, correspondence exists between the backsheets of the first and the second alternatives of the Proposed Count.

The phrase "a liquid permeable topsheet which is positioned in facing relation with said backsheet" of the first alternative of the Proposed Count corresponds exactly with "a liquid pervious topsheet which is positioned in facing relation with said backsheet" of the second alternative of the Proposed Count.

A "liquid permeable topsheet" permits "liquid to readily penetrate through its thickness." (see Col. 13, lines 14-15 of the '890 Patent). A "liquid pervious topsheet" also permits "liquids (e.g., menses and/or urine) to readily penetrate through its thickness." (see Page 34, lines 19-20 of the present application).

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Thus, correspondence exists because the topsheet of the second alternative has the same relation to the backsheet and the same function as the topsheet of the first alternative.

The phrase “an absorbent body located between said backsheet and said topsheet” of the first alternative of the Proposed Count corresponds exactly with the phrase “an absorbent core located between said backsheet and said topsheet” of the second alternative of the Proposed Count.

An “absorbent body” may comprise “a matrix of cellulosic fluff, such as wood pulp fluff, and superabsorbent hydrogel-forming particles.” (see Col. 24, lines 19-20 of the ‘890 Patent). An “absorbent core” may comprise “any of a wide variety of liquid-absorbing materials commonly used in absorbent articles, such as comminuted wood pulp, . . . superabsorbent polymers; absorbent gelling materials; or any equivalent material or combinations of materials, or mixtures of these.” (see Page 33, line 33-Page 34, line 4 of the present application).

Thus, correspondence exists because the absorbent elements of both alternatives are located between the topsheet and the backsheet, and the absorbent element of the second alternative comprises substantially same absorbent materials to achieve substantially same absorbent function as the absorbent element of the first alternative.

The phrase “a lotion formulation . . . which includes from about 5 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and from about 0.1 to about 25 weight percent of a viscosity enhancer selected from the group consisting of polyolefin resins, polyolefin polymers, polyethylene, lipophilic/oil thickeners, ethylene/vinyl acetate copolymers, silica, talc, colloidal silicone dioxide, zinc stearate, cetyl hydroxy ethyl cellulose and other modified celluloses, and mixtures thereof” of the first alternative of the Proposed Count corresponds substantially with the phrase “a skin care composition . . . which includes from about 10 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and from about 0.1 to about 25 weight percent of a rheological agent selected from the group consisting of poly- α -olefins, polyethylene, castor oil derivatives, alkyl galactomannan, polyethylene and vinyl acetate copolymers, fumed silicas, zinc stearate, cetyl hydroxy ethyl cellulose and other modified celluloses, and mixtures thereof” of the second alternative of the Proposed Count.

Applicants submit that the viscosity enhancers and the rheological agents each include a group of compounds that are identical or substantially identical. The overlapping or identical compounds are as follows:

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Rheological Agents of the Present Application	Viscosity Enhancers of the '890 Patent
poly- α -olefins, polyethylene,	polyolefin resins, polyolefin polymers, polyethylene, . . .
castor oil derivatives, alkyl galactomannan,	lipophilic/oil thickeners,
polyethylene and vinyl acetate copolymers,	ethylene/vinyl acetate copolymers,
fumed silicas,	silica,
zinc stearate,	zinc stearate,
cetyl hydroxy ethyl cellulose and other modified celluloses,	cetyl hydroxy ethyl cellulose and other modified celluloses,
and mixtures thereof.	talc, colloidal silicone dioxide, . . . , and mixtures thereof.

Further, a viscosity enhancer "may be added to the lotion formulation to increase the viscosity and stabilize the formulation on the bodyfacing surface of the topsheet 22 . . ." (see Col. 15, lines 7-9 of the '890 Patent). Moreover, "the lotion formulations applied to the topsheet are more stable and have a higher viscosity than conventional lotion formulations, particularly at higher temperatures, . . ." (emphasis added) (see Col. 6, lines 8-11 of the '890 Patent). A rheological agent "modifies the viscosity of the composition and stabilizes the composition." (see Page 6, lines 29-30 of the present application).

Thus, correspondence between "a viscosity enhancer" and "a rheological agent" exists because each comprises a group of compounds that substantially overlap with the other group of compounds and function in substantially the same way to achieve substantially the same result.

Additionally, correspondence between "a lotion formulation" and "a skin care composition" exists because both compositions include the same or substantially the same weight percentages of an emollient, a wax and a third component which comprises substantially the same compounds that function in substantially the same way to achieve substantially the same result.

Finally, the phrase "a lotion formulation on at least a portion of a body-facing surface" of the first alternative of the Proposed Count corresponds substantially to the phrase "a skin care composition on at least a portion of a wearer-contacting surface" of the second alternative of the Proposed Count.

A lotion formulation may be applied to "bodyfacing surface of the topsheet . . . to transfer such lotion to the wearer's skin." (see Col. 17, lines 44-48 of the '890 Patent) A skin care composition may be applied to a wearer-contacting surface, which includes "portions of the topsheet, the backsheet, secondary layers underlying the topsheet or the absorbent core, leg cuffs, waist regions, side panels, liners, and the like." (see Page 8, lines 28-29 of the present application) Therefore, a wearer-contacting surface of the topsheet is equivalent to a body-facing surface of the topsheet.

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Correspondence exists because substantially the same composition is disposed on substantially the same surface to effectuate substantially the same result in the second alternative as in the first alternative.

IDENTIFICATION OF PATENT AND CORRESPONDENCE
OF CLAIMS UNDER 37 C.F.R. §1.607(c)

Pursuant to 37 C.F.R. §1.607(c), Applicants respectfully submit Claims 1-4 of the present application are substantially identical to and define the same patentable invention as that of Claims 1-17 of the '890 Patent in substantially corresponding language. Applicants' Claims 1-4 are fully supported by the specification of the present and Applicants' parent application.

Specific correspondence of Applicants' Claims 1-4 with Claims 1, 9-11 of the '890 Patent is indicated below.

Applicants' Claim 1 corresponds substantially with Claim 1 of the '890 Patent.

Applicants' dependent Claim 2 corresponds substantially with dependent Claim 9 of the '890 Patent.

Applicants' dependent Claim 3 corresponds substantially with dependent Claim 10 of the '890 Patent.

Applicants' dependent Claim 4 corresponds substantially with dependent Claim 11 of the '890 Patent.

PRIMA FACIE SHOWING UNDER 37 C.F.R. §1.608

The present application is a divisional of U.S. Serial No. 09/563,638 filed on May 2, 2000 and has an effective filing date of May 21, 1999. Consequently, the current application is entitled to an effective U.S. filing date of May 21, 1999 pursuant to 35 U.S.C. §120.

The earliest effective U.S. filing date to which the '890 Patent may be entitled to appears to be April 23, 1999, which corresponds to the filing date of the parent Application Serial No. 09/298,314. The '314 Application appears to be the earliest parent application of the '890 Patent that describes all the limitations of Claim 1 of the '890 Patent. Specifically, the '314 Application appears to be the earliest parent application of the '890 Patent that describes viscosity enhancers, which is one of the requirements of the Claim 1.

As shown above, the effective U.S. filing date of the present application is May 21, 1999 and the earliest effective U.S. filing date to which Claims 1-18 of the '890 patent may be entitled is April 23, 1999. Since the effective filing dates are less than one month apart, no additional affidavit, evidence, or explanation under 37 C.F.R. §1.608 is presently due or necessary.

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CONCLUSION

An interference-in-fact between the present application and the '890 Patent should be declared with the Proposed Count set forth herein used as the Count in the interference. Further, Claims 1-6 of the present application and Claims 1-17 of the '890 Patent should be designated as corresponding to the Proposed Count.

A favorable and early action on this Request for Interference is respectfully solicited.

Respectfully submitted,
For: Klofta et al.



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